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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH NORTHERN DIVISION**

<p>MICROSOFT CORPORATION, a Washington corporation, Plaintiff, vs.</p> <p>STAR WEST DISTRIBUTING, INC., d/b/a STARWEST COMPUTERS, a Utah corporation, Defendant.</p>	<p style="text-align: center;">COMPLAINT</p> <p>Case No. 2:17-cv-01151-BCW</p> <p>Magistrate Judge Brooke C. Wells</p>
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Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against Defendant Star West Distributing, Inc., d/b/a StarWest Computers (“StarWest” or “Defendant”), alleging as follows:

I. INTRODUCTION

1. This is an action under federal law for (1) copyright infringement; (2) trademark infringement; (3) trade dress infringement; (4) false designation of origin and false or misleading description or representation of fact; and (5) unfair competition and false advertising.

2. These claims arise from the unauthorized copying of Microsoft's copyrighted software and the trademarks displayed in such software. On information and belief, Defendant unlawfully distributed and falsely advertised hundreds of copies of unlicensed and pirated Microsoft software. Defendant unlawfully uses Microsoft trademarks on its website in an attempt to demonstrate some affiliation with, or endorsement by, Microsoft of the Microsoft products being advertised when there is none. Defendant also falsely represent that its software is legally licensed when it is not.

3. On information and belief, Defendant subsequently distributed those systems to customers who were unaware they were receiving pirated and unlicensed software and were harmed as a result by Defendant's misconduct.

4. On information and belief, Defendant's software piracy was a systematic part of its business operations.

II. PARTIES

5. Microsoft is a Washington corporation with its principal place of business in Redmond, Washington. Microsoft develops, markets, distributes, and licenses computer software, among other products and services.

6. On information and belief, Defendant is a registered Utah corporation with its principal place of business at 506 South Main Street, Bountiful, Utah. Defendant repairs and sells computers and other electronic devices.

7. At various times relevant to this complaint, Defendant was and is in possession or control of the following Internet Protocol ("IP") address 173.10.29.66 (the "IP Address").

III. JURISDICTION & VENUE

8. The Court has subject matter jurisdiction over Microsoft's claims for copyright infringement, trademark infringement, trade dress infringement, unfair competition and false advertising, and related claims pursuant to 15 U.S.C. §§ 1121 and 1125, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a). The Court also has subject matter jurisdiction under 28 U.S.C.

§ 1332 because this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

9. The Court has personal jurisdiction over Defendant because Defendant resides in, and is headquartered in, the District of Utah, and otherwise does business in this District. According to the Utah Secretary of State's online records, Defendant's business address is 506 South Main Street, Bountiful, Utah, 84010.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a) and 28 U.S.C. § 1391(a) and (b) because Defendant resides in the District and a substantial part of the events giving rise to this suit occurred in the District.

IV. FACTS COMMON TO ALL CLAIMS

A. The Global Problem of Software Piracy

11. Software developers lose billions of dollars in annual revenue from software piracy, namely, the unauthorized and unlawful copying, downloading, and distributing of copyrighted and trademarked software and related components. In 2015, the commercial value of pirated software in the United States exceeded \$10 billion.

12. One prominent form of software piracy is known as "hard-disk loading," the unauthorized commercial copying and installation of infringing software on devices which are often sold in competition with, and often for lower prices than, devices pre-installed with legally licensed copies of software.

13. Software developers, like Microsoft, are not the only victims of software piracy. Consumers are also victims, as they are often deceived by distributors of pirated software who go to great lengths to make the software appear genuine. These customers may unwittingly expose themselves to security risks associated with the use of pirated software. *See* Federal Bureau of Investigation, *Consumer Alert: Pirated Software May Contain Malware*, Aug. 1, 2013, at <https://www.fbi.gov/news/stories/pirated-software-may-contain-malware1> (noting the relatively greater risk that pirated software is infected with malicious software, or "malware," which can be

used to record keystrokes and thus capture sensitive information such as user names, passwords, and Social Security numbers).

B. Microsoft's Software and Intellectual Property

14. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft's software programs are recorded on distributable media, such as DVDs, or are made available for download through various authorized distribution channels.

15. **Windows 10:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 10 ("Windows 10"). Windows 10 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows 10 include Windows 10 and Windows 10 Professional. Microsoft holds a valid copyright in Windows 10 Professional, the most expansive version of Windows 10. As a result, Microsoft's copyright in Windows 10 Professional encompasses all other versions of Windows 10. Microsoft's copyright in Windows 10 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 10 Professional, bearing the number TX 8-058-526, is attached as Exhibit 1.

16. **Windows 8.1:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 8.1 ("Windows 8.1"). Windows 8.1 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows 8.1 include Windows 8 and Windows 8.1 Professional. Microsoft holds a valid copyright in Windows 8.1 Professional, the most expansive version of Windows 8.1. As a result, Microsoft's copyright in Windows 8.1 Professional encompasses all other versions of Windows 8.1. Microsoft's copyright in Windows 8.1 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 8 Professional, bearing the number TX 7-740-672, is attached as Exhibit 2.

17. **Windows 8:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 8 (“Windows 8”). Windows 8 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows 8 include Windows 8 and Windows 8 Professional. Microsoft holds a valid copyright in Windows 8 Professional, the most expansive version of Windows 8. As a result, Microsoft’s copyright in Windows 8 Professional encompasses all other versions of Windows 8. Microsoft’s copyright in Windows 8 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 8 Professional, bearing the number TX 7-601-008, is attached as Exhibit 3.

18. **Windows Vista:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows Vista (“Windows Vista”). Windows Vista is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows Vista include Windows Vista Ultimate, Windows Vista Home Premium, and Windows Vista Home Basic. Microsoft holds a valid copyright in Windows Vista Ultimate, the most expansive version of Windows Vista. As a result, Microsoft’s copyright in Windows Vista Ultimate encompasses all other versions of Windows Vista. Microsoft’s copyright in Windows Vista Ultimate was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Windows Vista Ultimate, bearing the number TX 6-508-905, is attached as Exhibit 4.

19. **Windows 7:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 7 (“Windows 7”). Windows 7 is available in a number of different versions including Windows 7 Ultimate, Windows 7 Professional, Windows 7 Home Premium, and Windows 7 Enterprise. Microsoft holds a valid copyright in Windows 7 Ultimate, the most expansive version of Windows 7. As a result, Microsoft’s copyright in Windows 7 Ultimate encompasses all other versions of Windows 7.

Microsoft's copyright in Windows 7 Ultimate was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 7 Ultimate, bearing the number TX 7-009-361, is attached as Exhibit 5.

20. **Office 2016:** Microsoft has developed, advertises, markets, distributes, and licenses a suite of productivity software for business, home, and educational use called Microsoft Office 2016 ("Office 2016"). Office 2016 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Office 2016 include, but are not limited to, Office 365 Business, Office 365 Business Essentials, Office 365 Business Premium, Office 365 ProPlus, Office 365 Enterprise E1, Office 365 Enterprise E3, Office 365 Enterprise E5, Office Professional 2016, Office Professional Home and Business 2016, Office Home and Business 2016, Office Home and Student 2016, and Office Professional Plus 2016. Microsoft holds a valid copyright in Office 365 ProPlus 2016, the most expansive version of Office 2016, and this copyright encompasses all versions of Office 2016, including Office Professional 2016. Microsoft's copyright in Office 365 ProPlus 2016 was duly and properly registered with the United States Copyright Office, bearing the number TX 8-097-602, and is attached hereto as Exhibit 6.

21. **Office 2013:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Office 2013 ("Office 2013"). Office 2013 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Office 2013 include Office 2013 Professional, Office 2013 Home and Business, and Office 2013 Home and Student. Microsoft holds a valid copyright in Office 2013 Professional Plus, the most expansive version of Office 2013. As a result, Microsoft's copyright in Office 2013 Professional encompasses all other versions of Office 2013. Microsoft's copyright in Office 2010 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Office 2013 Professional, bearing the number TX 7-649-882, is attached as Exhibit 7.

22. **Office 2010:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Office 2010 (“Office 2010”). Office 2010 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Office 2010 include Office 2010 Professional, Office 2010 Professional Plus, Office 2010 Home and Business, and Office 2010 Home and Student. Microsoft holds a valid copyright in Office 2010 Professional Plus, the most expansive version of Office 2010. As a result, Microsoft’s copyright in Office 2010 Professional Plus encompasses all other versions of Office 2010. Microsoft’s copyright in Office 2010 Professional Plus was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Office 2010 Professional Plus, bearing the number TX 7-151-840, is attached as Exhibit 8.

23. **Windows Server 2012:** Microsoft has developed, advertises, markets, distributes, and licenses a line of server operating system called Windows Server 2012. Windows Server 2012 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows Server 2012 include Windows Server Standard 2012 R2, Windows Server Standard 2012, Windows Web Server 2012 R2, and Windows Web Server 2012. Microsoft holds a valid copyright in Windows Server, which encompasses all versions of Windows Server. Microsoft’s copyright in Windows Server was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Windows Server, bearing the number TX 7-122-123, is attached as Exhibit 9.

24. **Project Standard 2010:** Microsoft has developed, advertises, markets, distributes, and licenses a line of project management software called Project 2010. Project 2010 is available in two versions, each of which includes certain combinations of products, programs, and features. Versions of Project 2010 include Project Standard 2010 and Project Professional 2010. Microsoft holds a valid copyright in Project Professional 2010, which encompasses both Project Standard 2010 and Project Professional 2010. Microsoft’s copyright in Project

Professional 2010 was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Project Professional 2010, bearing the number TX 6-524-397, is attached as Exhibit 10.

25. Microsoft has also duly and properly registered a number of trademarks and service mark in the United States Patent and Trademark Office on the Principal Register (“Microsoft Marks”), including without limitation:

- (a) “MICROSOFT,” Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
- (b) “WINDOWS,” Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit;
- (c) “FLAG DESIGN TWO (B/W),” Trademark Registration No. 2,738,877, for computer software;
- (d) “FLAG DESIGN TWO (COLOR),” Trademark Registration No. 2,744,843, for computer software;
- (e) “MICROSOFT OFFICE,” Trademark Registration No. 3,625,391, for computer productivity software;
- (f) “OFFICE 2010 DESIGN,” Trademark Registration No. 4,029,299, for computer productivity software;
- (g) “OFFICE 2012 DESIGN,” Trademark Registration No. 4,459,826, for computer productivity software;
- (h) “ACCESS,” Trademark Registration No. 3,238,869, for computer database management software;
- (i) “ACCESS LAUNCH ICON (2010),” Trademark Registration No. 3,905,556, for computer database management software;
- (j) “ACCESS LAUNCH ICON (2012),” Trademark Registration No. 4,365,955 for computer database management software;

- (k) “CAMERA TILE,” Trademark Registration No. 4,415,986 for computer software for accessing and managing camera functions;
- (l) “CHARM BAR,” Trademark Registration No. 4,489,348 for computer software operating system;
- (m) “EXCEL,” Trademark Registration No. 2,942,050, for computer spreadsheet software;
- (n) “EXCEL LAUNCH ICON 2010,” Trademark Registration No. 3,905,558 for computer spreadsheet software;
- (o) “EXCEL LAUNCH ICON 2012,” Trademark Registration No. 4,355,451 for computer spreadsheet software;
- (p) “GAMES TILE,” Trademark Registration No. 4,444,995 for computer software enabling access to online games;
- (q) “MAPS TILE,” Trademark Registration No. 4,415,985 for computer software for mapping and directions;
- (r) “MESSAGING TILE,” Trademark Registration No. 4,426,631 for computer software for text and multimedia messaging;
- (s) “MUSIC TILE,” Trademark Registration No. 4,426,630 for computer software for downloading and listening to music and other audio content;
- (t) “ONENOTE,” Trademark Registration No. 2,844,710, for computer software for use in note taking;
- (u) “ONENOTE LAUNCH ICON 2010,” Trademark Registration No. 3,905,559 for computer software for use in note taking;
- (v) “ONENOTE LAUNCH ICON 2012,” Trademark Registration No. 4,351,584 for computer software for use in note taking;
- (w) “OUTLOOK,” Trademark Registration No. 2,188,125, for computer programs for providing enhanced electronic mail and scheduling capabilities;

- (x) “OUTLOOK LAUNCH ICON 2010,” Trademark Registration No. 3,905,560, for computer programs for providing enhanced electronic mail and scheduling capabilities;
- (y) “OUTLOOK LAUNCH ICON 2012,” Trademark Registration No. 4,355,446, for computer programs for providing enhanced electronic mail and scheduling capabilities;
- (z) “POWERPOINT,” Trademark Registration No. 1,475,795, for computer software programs for creating presentations, graphics and videos;
- (aa) “POWERPOINT LAUNCH ICON 2010,” Trademark Registration No. 3,905,561, for computer software programs for creating presentations, graphics and videos;
- (bb) “POWERPOINT LAUNCH ICON 2012,” Trademark Registration No. 4,385,388, for computer software programs for creating presentations, graphics and videos;
- (cc) “PROJECT LAUNCH ICON (2010),” Trademark Registration No. 3,938,763, for project management software;
- (dd) “PUBLISHER LAUNCH ICON,” Trademark Registration No. 3,909,142 for desktop publishing software;
- (ee) “PUBLISHER LAUNCH ICON 2012,” Trademark Registration No. 4,355,448 for desktop publishing software;
- (ff) “SPORTS TILE,” Trademark Registration No. 4,426,632 for computer software for viewing information and content about sports;
- (gg) “VIDEO TILE,” Trademark Registration No. 4,412,218 for computer software for downloading and viewing video content;
- (hh) “WINDOWS 8 PACKAGING,” Trademark Registration No. 4,476,005, for computer operating system software;

- (ii) “WINDOWS SERVER,” Trademark Registration No. 3,056,149, for operating system, computer and utility programs;
- (jj) “WINDOWS STORE TILE,” Trademark Registration No. 4,552,497, for operating system software;
- (kk) “WINDOWS VISTA,” Trademark Registration No. 3,424,198, for providing online information concerning computer operating system programs, and providing online technical support in the field of computer operating systems;
- (ll) “WINDOWS VISTA,” Trademark Registration No. 3,235,107, for operating system programs;
- (mm) “WORD LAUNCH ICON 2010,” Trademark Registration No. 3,909,143, for word processing software; and
- (nn) “WORD LAUNCH ICON 2012,” Trademark Registration No. 4,355,444 for word processing software.

True and correct copies of the Trademark Registrations for (a) through (nn) above are attached as Exhibits 11 through 50, respectively.

C. Microsoft’s Distribution Channels for Software

26. Microsoft distributes its software through a number of distribution channels, including the Original Equipment Manufacturer (“OEM”), volume licensing, subscriptions, and refurbisher channels.

27. The OEM distribution channel is one through which Microsoft software is distributed to computer and device manufacturers called OEMs. OEMs customarily pre-install software on the devices they build including, most commonly, the Microsoft Windows operating system.

28. The OEM distribution channel involves sub-channels that supply Microsoft software to different categories of OEMs. Two of these sub-channels are the Commercial OEM (“COEM”) channel and the Direct OEM (“DOEM”) channel.

29. Through the COEM channel, Microsoft-authorized distributors supply what is called “system builder” software to small and medium-sized OEMs for pre-installation on devices.

30. Through the DOEM channel, Microsoft directly provides software to large computer manufacturers, such as Dell and Lenovo, for pre-installation on devices. The DOEMs acquire some components associated with the Microsoft software from Microsoft Authorized Replicators (“ARs”).

31. In addition to the OEM channel, Microsoft offers a number of subscription programs through which it provides software to qualified subscribers. One example of a subscription program is the Microsoft Developer Network (“MSDN”), which is for individuals and entities that develop third-party software compatible with Microsoft software. MSDN subscribers are able to download certain Microsoft software directly from Microsoft.

32. Microsoft also offers Volume Licensing (“VL”) programs for its business customers. Through the VL program, customers purchase licenses for their software and can add, remove, and upgrade their software as their business needs evolve.

D. Product Activation

33. Like many other software developers, Microsoft has implemented a wide-range of initiatives to protect its customers and combat theft and infringement of its intellectual property. One important Microsoft anti-piracy technology tool is its product activation system, which involves the activation of software through product activation keys.

34. A Microsoft product key is a 25-character alphanumeric string generated by Microsoft and provided to customers and OEMs. When customers and OEMs install Microsoft software on a device, they are required to enter a product key. As part of the activation process, customers and OEMs (with some exceptions not relevant here) voluntarily contact Microsoft’s activation servers over the Internet and transmit their product keys and other technical information about their device to the activation servers.

35. The activation process is analogous to the activation of credit cards or mobile phones with a code provided by the financial institution or the mobile carrier. Because Microsoft's copyrighted software is capable of being installed on an unlimited number of computers, Microsoft relies on the product activation process to detect piracy and protect consumers from the risks of non-genuine software.

36. In the OEM channel, each copy of genuine Microsoft Windows 10, Windows 8.1, Windows 8, Windows Vista, Windows 7, Office 2016, Office 2013, Office 2010, Windows Server 2012, and Project Standard 2010 software is distributed with a product key unique to that copy of the software—thus, for example, if a customer purchases ten copies of Windows 7, the customer is supplied with ten unique product keys. For Microsoft's subscription and VL programs, customers are normally supplied a single product key for each version of Microsoft software they license. For example, subscription and volume licensing customers receive one reusable product key for all Office 2010 Professional licenses authorized under their agreements to install and activate all copies.

37. Product activation works differently in the COEM and DOEM channels. COEMs use individual product keys to install and, in some cases, activate the software on the devices. DOEMs, on the other hand, either use a master key or a separate file generated from Microsoft to install Windows software on each device.

E. Microsoft's Use of Cyberforensics to Combat Piracy

38. In order to combat the global threat of software piracy of its software, Microsoft relies on investigative methods that leverage state-of-the-art technology to detect software piracy called "cyberforensics."

39. Through cyberforensics, Microsoft analyzes activation data voluntarily provided by users when they activate Microsoft software, including the IP address from which a given product is activated. An IP address is a numerical identifier used to uniquely identify an internet-capable device when the device is connected to the Internet. An IP address is ordinarily

assigned to an internet user (whether an individual or an entity) by the user's Internet Service Provider ("ISP").

40. Entities charged with managing and administering internet numbering resources, including IP addresses, publish information about IP address assignment and registration in publicly-searchable databases. Akin to an IP address "phone book," these databases can be used to associate each IP address with the individual or entity assigned to use that address. In some cases, the listed individual or entity is actually using the IP address; in other cases, the listed individual or entity is an ISP who has assigned the IP address to one of its customers. Thus, in some instances, the identity of the individual or entity associated with a particular IP address is publicly available; in other instances, the identity of the individual or entity can only be obtained from the ISP assigned to that IP address.

41. Cyberforensics allows Microsoft to analyze billions of activations of Microsoft software and identify activation patterns and characteristics that make it more likely than not that the IP address associated with the activations is an address through which pirated software is being activated.

F. Defendant's Infringing Conduct

42. Microsoft's cyberforensics have identified that between November 2011 and October 2016, hundreds of activations and attempted activations of unlicensed and pirated Microsoft Windows 10, Windows 8.1, Windows 8, Windows Vista, Windows 7, Office 2016, Office 2013, Office 2010, Windows Server 2012, and Project Standard 2010 software occurred from an IP address identified to be assigned to Defendant with product keys that were:

- (a) stolen from Microsoft's supply chain;
 - (b) used more times than is authorized by the applicable software license;
 - (c) used without authorization under the applicable license (such as product keys intended for educational institutions used by commercial entities);
- and/or

(d) used to activate software outside of the region for which they were issued and authorized.

43. On information and belief, each of these activations and attempted activations constitutes the unauthorized copying of Microsoft software, in violation of Microsoft's software licenses and its intellectual property rights.

44. On information and belief, Defendant has been and continues to be involved in installing counterfeit and infringing copies of Microsoft's software and/or related components.

45. On information and belief, Defendant has committed and continues to commit acts of copyright and trademark infringement against Microsoft. On information and belief, at a minimum, Defendant acted with willful blindness to, or in reckless disregard of, Microsoft's registered copyrights, trademarks, and service mark.

46. Defendant's website also displays several of the above-listed Microsoft Marks. This unauthorized use of the world-famous Microsoft Marks is designed to add credibility to Defendant's representations and convince the public they lawfully distribute Microsoft software and/or related components by Microsoft.

47. On information and belief, Microsoft has been harmed by Defendant's advertising activities, including the unauthorized use of Microsoft's trademarks to describe the items that Defendant is distributing.

V. CAUSES OF ACTION

First Claim

Copyright Infringement - 17 U.S.C. § 501 *et seq.*

48. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

49. Microsoft is the sole owner of Microsoft Windows 10, Windows 8.1, Windows 8, Windows Vista, Windows 7, Office 2016, Office 2013, Office 2010, Windows Server 2012, and

Project Standard 2010, and of the corresponding copyrights and Certificates of Registration with the registration numbers listed above.

50. Defendant has infringed Microsoft's copyrights by reproducing Microsoft software in the United States of America without approval or authorization from Microsoft.

51. At a minimum, Defendant acted with willful blindness to, or in reckless disregard of, Microsoft's registered copyrights.

52. As a result of Defendant's wrongful conduct, Microsoft is entitled to recover its actual damages and Defendant's profits attributable to the infringement. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

53. The award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

54. Microsoft is further entitled to injunctive relief and an order impounding all infringing materials. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things: (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value; (b) Defendant's infringement harms Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

Second Claim
Trademark Infringement – 15 U.S.C. § 1114

55. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

56. Defendant's activities constitute infringement of Microsoft's federally registered trademarks and service mark with the registration numbers listed above.

57. Microsoft advertises, markets, distributes, and licenses its software and related components under the trademarks and service mark described above and uses these trademarks and service mark to distinguish Microsoft's products from the software and related items of others in the same or related fields.

58. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service marks, they have come to mean, and are understood by customers, end users, and the public to signify, software programs and related components or services of Microsoft.

59. The infringing materials that Defendant has and is continuing to install are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

60. Further, Defendant's activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendant is installing originate with or are authorized by Microsoft, thereby harming Microsoft, its licensees, and the public.

61. At a minimum, Defendant acted with willful blindness to, or in reckless disregard of, Microsoft's registered marks.

62. As a result of Defendant's wrongful conduct, Microsoft is entitled to recover its actual damages, Defendant's profits attributable to the infringement, and treble damages and attorney fees pursuant to 15 U.S.C. § 1117 (a) and (b). Alternatively, Microsoft is entitled to statutory damages under 15 U.S.C. § 1117(c). Microsoft is further entitled to injunctive relief and an order compelling the impounding of all infringing materials. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things: (a) Microsoft's trademarks and service mark are unique and valuable property that have no readily determinable market value; (b) Defendant's infringement constitutes harm to Microsoft's reputation and goodwill such that Microsoft could not be made whole by any monetary award; (c) if Defendant's wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of the infringing materials; and (d) Defendant's wrongful conduct, and the resulting harm to Microsoft, is continuing.

Third Claim
Trade Dress Infringement – 15 U.S.C. § 1125 *et seq.*

63. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

64. Microsoft's trade dress—specifically, the design for its software—is used in commerce, is non-functional, is inherently distinctive, and has acquired secondary meaning in the marketplace.

65. Microsoft's trade dress has acquired secondary meaning in the marketplace as a result of Microsoft's extensive advertising, Microsoft's sales success, and the length and exclusivity with which Microsoft has used its product packaging and design, among other factors.

66. Defendant is unfairly competing with Microsoft by adopting and advertising infringing trade dress to identify its goods and services.

67. The intent and result of Defendant's actions are to create the impression and perception that Defendant's goods and services emanate from or are endorsed by Microsoft, causing confusion, mistake, and deception among the public as to the source and origin of those goods and services.

68. Defendant's actions are intended to cause, have caused, and are likely to cause confusion, mistake, and deception among consumers, the public, and the trade who recognize and associate Microsoft trade dress with Microsoft.

69. Moreover, Defendant's conduct is likely to cause confusion, mistake, and deception among consumers, the public, and the trade as to the source of the infringing products, or as to a possible affiliation, connection, or association between Microsoft, Defendant, and the infringing products.

70. Defendant's use of an infringing trade dress has caused, and unless restrained, will continue to cause injury to Microsoft.

71. By using the same or a confusingly similar trade dress, Defendant has misrepresented the nature, origin, characteristics, and quality of their products, in violation of the Lanham Act, 15 U.S.C. § 1125(a).

72. By reason of Defendant's actions, Microsoft has suffered and will continue to suffer irreparable harm for which it has no adequate remedy at law, and thus, Microsoft is entitled to injunctive relief.

73. As a result of Defendant's wrongful conduct, Microsoft is entitled to recover its actual damages, Defendant's profits, and treble damages, and attorney fees pursuant to 15 U.S.C. § 1117.

Fourth Claim
**False Designation of Origin, False and Misleading Description or
Representation of Fact – 15 U.S.C. § 1125 et seq.**

75. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

76. Microsoft advertises, markets, distributes, and licenses its software and related components under the trademarks described above, and uses these trademarks to distinguish Microsoft's software and related components from the software or products of others in the same field or related fields.

77. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

78. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software programs and related components as well as its licensing programs.

79. On information and belief, Defendant's wrongful conduct includes the use of Microsoft's marks, name, and/or imitation visual designs (specifically displays, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Microsoft visual designs) and representation of affiliation with Microsoft's AER program in connection with Defendant in connection with their goods and services.

80. On information and belief, Defendant engaged in such wrongful conduct with the purpose of misleading or confusing their customers and the public as to the origin and authenticity of the goods and services advertised, marketed, installed, offered or distributed in connection with Microsoft's marks, name, and imitation visual designs, and of trading upon Microsoft's goodwill and business reputation. Defendant's conduct constitutes (a) false designation of origin, (b) false or misleading representation or description, and (c) false or misleading representation that the imitation visual images originate from or are authorized by Microsoft, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

81. Defendant's wrongful conduct is likely to continue unless restrained and enjoined.

82. Defendant's wrongful conduct is likely to continue unless restrained and enjoined.

83. As a result of Defendant's wrongful conduct, Microsoft is entitled to recover its actual damages, Defendant's profits, and treble damages, and attorney fees pursuant to 15 U.S.C. § 1117.

84. Further, Microsoft is entitled to injunctive relief and to an order compelling the impounding of all imitation marks and visual designs being used, advertised, marketed, installed, offered or distributed by Defendant. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things: (a) Microsoft's marks, name and visual designs are unique and valuable property which have no readily determinable market value; (b) Defendant's advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

Fifth Claim
Unfair Competition & False Advertising – 15 U.S.C. § 1125(a)

85. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

86. Defendant has made false and misleading representations and descriptions of fact in connection with the offering for sale and sale of unlicensed Microsoft software, including without limitation, that Defendant is offering licensed Microsoft software.

87. Defendant's false and misleading representations and descriptions of fact were made in commercial advertising or promotion, including without limitation, in connection with the offering for sale and sale of unlicensed Microsoft software.

88. Defendant's false and misleading representations and descriptions of fact misrepresent the nature, characteristics, qualities, or origin of its goods, services, and commercial activities.

89. Defendant's use of Microsoft's copyrights, trademarks, and trade dress referenced above and its false and misleading representations and descriptions of fact in interstate commerce in connection with its offering for sale of unlicensed Microsoft software has either deceived or has the capacity to deceive a substantial segment of potential consumers, and such deception is material, in that it is likely to influence the consumers' purchasing decisions.

90. Defendant has used, and continues to use, Microsoft's copyrights and trademarks referenced above to compete unfairly with Microsoft and to deceive customers.

91. Defendant's conduct constitutes false advertising and federal unfair competition, in violation of 15 U.S.C. § 1125(a).

92. Defendant's wrongful conduct is likely to continue unless restrained and enjoined.

93. As a result of Defendant's wrongful conduct, Microsoft is entitled to recover its actual damages, Defendant's profits, and treble damages and attorneys' fees pursuant to 15 U.S.C. § 1117.

94. Further, Microsoft is entitled to injunctive relief and an order directing Defendant to stop representing or implying that it is offering licensed Microsoft software. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things:

(a) Defendant's advertising, marketing, installation, or distribution of unlicensed Microsoft software constitutes harm to Microsoft such that Microsoft could not be made whole by any

monetary award; and (b) Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

95. On information and belief, Defendant's wrongful conduct includes passing off infringing materials as genuine Microsoft software or related components approved or authorized by Microsoft.

96. In distributing unlicensed software, Defendant has used Microsoft's name or marks in a way that is likely to deceive, and indeed has deceived, the public.

97. As a direct and proximate result of Defendant's unfair competition, Microsoft was injured in its business or property, including without limitation, (a) reputational injury and loss of business goodwill, and (b) displaced sales of genuine Microsoft as a result of the sale of pirated and unlicensed Microsoft software, in an amount to be proved at trial.

VI. PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully prays for the following relief:

- A. That the Court enter judgment in Microsoft's favor on all claims;
- B. That the Court restrain and enjoin Defendant, its directors, principals, officers, agents, representatives, employees, attorneys, successors and assigns, and all others in active concert or participation with it, from:
 - i. copying or making any other infringing use or infringing distribution of Microsoft's software and other intellectual property including but not limited to the software identified by the Trademark, Service Mark, and Copyright Registration Numbers listed above;
 - ii. manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any Microsoft software or other intellectual property bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed above;

iii. using any simulation, reproduction, counterfeit, copy, or colorable imitation of Microsoft's registered trademarks, service mark, copyrights, or trade dress including, but not limited to the Trademark, Service Mark, and Copyright Registration Numbers listed above, in connection with the manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, import, advertisement, promotion, or display of any software, component, and/or other item not authorized or licensed by Microsoft;

iv. engaging in any other activity constituting an infringement of any of Microsoft's trademarks, service mark, and/or copyrights, or trade dress, or of Microsoft's rights in, or right to use or to exploit those trademarks, service mark, and/or copyrights; and

v. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities listed above;

C. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported Microsoft software and/or materials bearing any of Microsoft's trademarks or service mark and any related item, including business records, that are in Defendant's possession or under their control;

D. That the Court enter an order declaring that Defendant holds in trust, as a constructive trustee for the benefit of Microsoft, the illegal profits obtained from its distribution of counterfeit and infringing copies of Microsoft's software, and requiring Defendant to provide Microsoft a full and complete accounting of all amounts due and owing to Microsoft as a result of Defendant's unlawful activities;

E. That Defendant be required to pay all general, special, actual, and statutory damages that Microsoft has sustained, or will sustain, as a consequence of Defendant's unlawful acts, and that such damages be enhanced, doubled, or trebled as provided for by 17 U.S.C. § 504(c) and 15 U.S.C. § 1117(b);

F. That Defendant be required to pay to Microsoft both the costs of this action and the reasonable attorneys' fees incurred by Microsoft in prosecuting this action, as provided for by 15 U.S.C. § 1117 and 17 U.S.C. § 505; and

G. That the Court grant Microsoft such other, further, and additional relief as the Court deems just and equitable.

DATED this 23rd day of October, 2017.

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